

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**RICHARD LIDDY, SR.**

**Plaintiff,**

**v.**

**WAYNE BAUMGART, et al.,**

**Defendant.**

) **CASE NO. 1:07 CV 3165**  
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)  
)  
) **JUDGE DONALD C. NUGENT**  
)  
) **Magistrate Judge Kenneth S. McHargh**  
)  
) **MEMORANDUM OPINION**  
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)

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Kenneth S. McHargh (Document #79) recommending that the Court grant the Motion to Dismiss filed by individual Defendants Tavano, Megyesi, Perez and Fisher.

Previously on April 28, 2008, this Court granted a motion to dismiss filed by the individual defendants in this case. (Docket #20.) The Motion to Dismiss (Docket #12) was granted under Fed. R. Civ. P. 12(b)(5) for insufficiency of service of process, on the basis that Mr. Liddy failed to serve the individual Defendants within the 120-day time limit provided by Rule 4(m). Subsequently, on December 2, 2008, Counsel for Defendants alerted the Court that the Motion to Dismiss had not been properly served on Mr. Liddy. The Court vacated its previous Order and allowed the individual Defendants to re-file their Motion to Dismiss. (Docket #70.) The Defendants re-filed their Motion to Dismiss, relying

on the same facts and arguments as in their original Motion. (Docket #71) Mr. Liddy filed a Brief in Opposition (Docket #75) and Defendants filed a Reply. (Docket #78).

On December 29, 2008, Magistrate Judge McHargh filed his Report and Recommendation. (Docket #79.) For the reasons stated previously, the Magistrate Judge determined that Mr. Liddy failed properly serve the individual Defendants. Mr. Liddy did not establish that the individual Defendants were served personally; did not show that they were served in a timely manner; and, did not present evidence of good cause to justify his failure to effect timely service. Accordingly, the Magistrate Judge recommends that the Motion to Dismiss (Docket #71) be granted and the action be dismissed against the individual Defendants for insufficiency of service of process.

On January 6, 2009, Mr. Liddy filed his Objection to Magistrate's Report and Recommendation. (Docket #87.) On January 13, 2009, Defendants filed their Response to Mr. Liddy's Objections. (Docket #88.) On January 22, 2009, Mr. Liddy filed a Rebuttal Brief. (Docket #93.)

### **Standard of Review for a Magistrate Judge's Report and Recommendation**

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

### **Discussion**

The Court has reviewed the Report and Recommendation *de novo*, as well as the objections filed by Mr. Liddy and Defendants' Response thereto. The Magistrate Judge correctly determined that Mr. Liddy's Complaint as against individual Defendants Tavano, Megyesi, Perez and Fisher should be dismissed. As discussed by this Court previously, there is no evidence, aside from Mr. Liddy's unsupported assertions, that he attached the U.S. Marshal forms required for service to his Notice of Compliance on December 27, 2007, and the docket does not reflect receipt by the Clerk, nor service by the Marshal, of the necessary documents. Thus, Mr. Liddy failed to effectuate service as to the individual Defendants.

### **Conclusion**

The Court hereby ADOPTS the Report and Recommendation issued by Magistrate Judge McHargh. (Docket #79.) Accordingly, the Motion to Dismiss filed by Defendants James Tavano, Joseph Megyesi, David Perez and John Fisher (Docket #71) is hereby GRANTED.

This case is terminated as to individual Defendants Tavano, Megyesi, Perez and Fisher.

IT IS SO ORDERED.

s/Donald C. Nugent  
DONALD C. NUGENT  
United States District Judge

DATED: March 4, 2009